IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.850 of 2007

Vinit Vinayak Maldikar ... Appellant

(Orig. Plaintiff)

V/s

1. Maharashtra Housing and Area Development Auithority, Mumbai-51
2. Mumbai Building Repairs and Reconstruction Board, Mumbai
3. Municipal Corporation of Gr.Mumbai, Mumbai
4. Anil Ramrao Naik, ... Respondents

(Orig.Defts)

Shri N.D.Jaywant for the Appellant

Shri N.V.Walawalkar with Vishwajeet S. Kapse for Respondent no.4

Ms Geeta Joglekar for BMC

CORAM:S.R.SATHE,J.

DATED;26th Oct. 2007

P.C.:-

1. Heard the learned Advocates for the parties at length.

2. The appellant the original plaintiff in L.C.Suit no.3621 of 2007 has filed the present Appeal against the order passed by the Judge, City Civil Court, Mumbai in Notice of Motion NO.3432 of 2007 whereby plaintiff's application for temporary injunction restraining defendants' from acting upon NOC dated 29-7-2006 issued by the defendant no.2 and IOD dated 16-5-2007 granted by the defendant no.3, till the disposal of the suit and restraining defendant no.4 from commencing the work of redevelopment on the suit property till the disposal of the suit, was dismissed. For the sake of convenience hereafter the parties shall be referred to as the plaintiff and defendants.

3. Brief facts giving rise to this appeal are as under:-

. Final Plot No.309, TPS, Dadar, Mumbai was purchased by the defendant no.4 some time in year 2003. It consists of four buildings, A Block, bear 2 assessment Nos. A43 and A45 while 2 other blocks are numbered as 47A and 47B. The said 4 buildings are occupied by in all 72 tenants. In August 2005 the defendant no.2

Mumbai Building Repairs and Reconstruction Board, MHADA appointed contractor to carry out structural repairs to structure no.43A. However, thereafter tenants of the buildings submitted a proposal for redevelopment. The defendant no.4 applied to the defendant no.2 seeking no objection for redevelopment of Final Plot No.307 under Development Control Rules 33(7). The defendant nos 1 and 2 granted NOC for redevelopment of 2 blocks viz. A43 and A47B. However, defendant no.3 Municipal Corporation of Greater Mumbai (hereinafter called as MCGB) sanctioned the Development plan submitted by the defendant no.4, in which the development of entire property i.e. 43A, 47A, 47B and 45A was shown. Thereafter majority of the tenants of buildings i.e. 47B agreed to vacate. However, plaintiff refused to vacate the premises though alternate accommodation was offered and option was also given to secure on his own alternate accommodation and for which the defendant no.4 had shown willingness to pay Rs.7,000/- per month towards the rent. However, the plaintiff refused the said offer. He contended that IOD issued by defendant no.3 and NOC given by defendant nos.1 and 2 are illegal. He also took the plea that premises occupied by him were business premises while defendant no.4 offered residential premises. He also contended that 70% of the total occupiers of the property have not given consent for redevelopment and as such the

defendant no.4 is not entitle to carry out the redevelopment as proposed. As the plaintiff took such adamant view the MHADA issued a notice under Section 95A under the Maharashtra Housing and Area Development Act, 1976 (in short MHADA Act) to the plaintiff.

4. Being aggrieved by the same plaintiffs filed the present suit and prayed for declaration that NOC issued by MHADA and IOD issued by MCGM are illegal and bad in law and prayed for permanent injunction restraining them from acting upon the said NOC and IOD. The plaintiff also filed Notice of Motion and prayed for temporary injunction restraining defendants from acting upon the said NOC and IOD and restraining defendant no.4 from commencing the development work.

5. The defendant no.4 filed affidavit in reply and contended that proceedings under Section 95A, initiated by MHADA, cannot be challenged by way of a suit. According to them, NOC issued by MHADA and IOD issued by MCGM are legal and valid and 70% tenants of the said two buildings viz. 47B and 43A and 45A have agreed to vacate the suit premises and in fact most of them have actually vacated the premises and as such the plaintiff cannot stall the redevelopment by taking false contention. The defendant therefore contended that the plaintiff has failed to make out any prima facie case

and the balance of convenience is also not in his favour.

6. After hearing the arguments advanced by both the learned Advocates and considering the documents produced on record the learned trial Judge came to the conclusion that NOC issued by MHADA and IOD issued by MCGM are legal and valid and the defendant no.4 is opposing to vacate the premises occupied by him by raising false and incorrect grounds. The learned Judge, therefore, held that plaintiff has failed to make out any prima facie case for granting temporary injunction as prayed. Naturally, he dismissed the Notice of Motion.

7. The above mentioned order is challenged by the plaintiff in the present appeal. In this appeal before me, Shri N.D.Jaywant, learned Advocate for the plaintiff has urged only 3 points. Firstly, he submitted that when MHADA had issued NOC only in respect of 2 buildings and plans submitted by the defendant no.4 was in respect of entire suit plot consisting of 4 buildings, it was not proper on the part of MCGM to issue IOD. Secondly he canvassed before me that 70% tenants of the total property had not given consent, so, redevelopment cannot be carried out. It was therefore argued that notice issued under

Section 95A of MHADA Act is illegal. Lastly, he submitted that premises offered by the defendant no.4 are not the commercial premises and the present premises of the plaintiff are commercial premises. So, according to him the defendants are in fact liable to offer commercial premises. Hence the learned Advocate for the plaintiff submitted that order passed by the learned trial Judge is not legal and correct.

8. As against this Shri Walawalkar, learned Senior Advocate for the defendant no.4 supported the order passed by the learned trial Judge.

9. It is not in dispute that suit property is owned by the defendant no.4 and defendant nos.1 and 2 i.e. MHADA have issued NOC in respect of 2 buildings i.e block no.47B and 43A and 45A. Admittedly, the present plaintiff is in occupation of one room situated on the terrace of the said building 47B. From the material on record it does appear that the said premises were taken on lease by plaintiff's father and the same were in fact residential premises. Merely because the plaintiff is carrying on his business of gold smith at the said place that will not change the original nature of the residential premises into business or commercial premises. So, one thing is certain that there is absolutely no substance in the allegations made by the

plaintiff in this behalf. So, naturally if alternate premises are to be provided by the defendants then they are supposed to provide residential premises.

10. Shri Jaywant, learned Advocate for the Appellant original plaintiff strenuously argued before me that the defendant no.4 could not secure the consent of 70% tenants of entire property and as such redevelopment cannot be carried out and IOD issued by defendant no.3 MCGM is in fact incorrect. The learned Advocate submitted that essential requisites of Section 95A of MHADA Act are in fact not fulfilled in the present case and as such the notice issued under the said provisions is premature. However, if we peruse the said Section 95A it is very clear that it is nowhere mentioned in the said Section that 70% of occupants of the total property must give consent. On the contrary, the words used in the said Section is "building", so, what is necessary to be seen is whether 70% occupants of the building have given consent. If it is so, it cannot be said in the instant case there is no compliance of the said provision, because so far as the building C in which the plaintiff is having his premises, most of the tenants or rather except the plaintiff all have given consent and most of them have vacated also. So, there is no substance in the argument advanced by the learned Advocate for the appellant-plaintiff in this behalf.

11. During the course of argument the learned Advocate for the plaintiff had to concede the position that IOD issued in respect of building A and C i.e. 43A, 45A and 47B cannot be said to be invalid. Once this position is admitted then plaintiff cannot make a grievance about the defendants' action of developing the property in phase manner. Thus, we find that there is in fact no justifiable ground for the plaintiff to oppose the redevelopment.

12. During the course of argument the learned Senior Advocate, Shri Walawalkar submitted that most of the tenants of buildings A and C have vacated the premises which were in their occupation and plaintiff has in fact taken adamant view. The defendant no.4 was even willing to pay amount of Rs.7000/- per month in case the alternate accommodation provided by the developer was not acceptable to the plaintiff. He also submitted that now defendant no.4 is even ready to pay the amount of Rs.8000/- per month in lieu of alternate accommodation. So, from the facts and circumstances it is very clear that the plaintiff has failed to show even prima facie that NOC and IOD issued by defendant nos.1 to 3 are not legal and correct or that work of redevelopment carried out by the defendant no.4 is illegal. The notice issued under Section 95A of MHADA

Act cannot be said to be illegal or bad in law. There is no justifiable reason for the plaintiff to oppose the notice under Section 95A.

13. The learned Senior Advocate Shri Walawalkar, pointed out that the present plaintiff has in fact filed a Writ Petition wherein also he has raised the same contention. However, the plaintiff has suppressed this fact and even during the course of argument the learned Advocate for the appellant plaintiff did not disclose this fact. Thus, it appears that the plaintiff is deliberately suppressing the material facts and is not approaching the Court with clean hands and he intends to get the redevelopment stopped by hook or crook. Naturally, no equitable relief can be granted to such person.

14. Turning to the question of balance of convenience also it must be noted that if temporary injunction is granted then the entire redevelopment of C building will be stalled and all tenants who have in fact vacated would also suffer irreparable loss and inconvenience. As against this no inconvenience or hardship is likely to be caused to the plaintiff because the defendant no.4 has shown willingness to provide alternate accommodation or if that is not accepted by the plaintiff then provide Rs.8000/- per

month in lieu of alternate accommodation.

15. In view of the above discussion, I have no hesitation to hold that the learned trial Judge has rightly rejected the Notice of Motion. There is nothing on record to show that the order passed by the learned trial Judge is illegal, arbitrary or capricious. Hence there is no need to interfere with the said order in the present appeal. Appeal is dismissed in limine.

16. Parties to act on authenticated copy of this order.

(S.R.SATHE,J.)